FEDERAL PERSONNEL COUNCIL
UNITED STATES CIVIL SERVICE COMMISSION
1626 K Street, N.W.
Washington 25, D.C.

FOR COUNCIL CONSIDERATION

May 21, 1952

To: Dr. F. M. Davenport, Chairman
Federal Personnel Council

From: Mr. Edward J. McVeigh, Acting Chairman
Employment Committee

Subject: PROMOTION REGULATIONS
UNDER THE 1952 WHITTEN AMENDMENT

Following the Council meeting on May 8, 1952, the Employment Committee has met twice and has assembled its work group on Whitten Amendment promotion regulations for several sessions. This work group, appointed on May 6 by Mr. Donald W. Smith, then Acting Chairman of the Employment Committee consisted of: Mr. Norman S. Cramer (Labor Department) Chairman, Mr. David T. Stanley (Defense Department), Mr. Sam H. Wolk (Federal Security Agency), and Mrs. Catherine S. East (Civil Service Commission). This group undertook consideration of three problems arising out of the expected passage of the revised Whitten Amendment.

1. The preparation and submission of questions of interpretation of the amendments of subsection (a) to the Attorney General. This was understood to include also the question of whether any questions should be submitted.

2. The development of a common approach to the problem of selecting employees to be converted from temporary promotion to permanent promotion.

3. The development of criteria to be applied in making determinations under the inequity clause of subsection (c). To this was added the matter of delegating authority to make such determinations to the Commission's regional directors if and when it is found possible to accept recommendations from officials other than agency heads.

The thinking in this report takes into account the careful work of the Council from the time of the Berlin airlift in 1948 and culminating in a series of reports on emergency personnel policies from August 1950 on. The Council's thinking was restated on February 1, 1951, in a report on H.R. 247, Mr. Miller's proposed revision of the Whitten Amendment. This letter is reproduced as an appendix hereto. The Employment Committee has reviewed and revised the work group's findings and presents the following recommendations:

OVER

I-A. Questions for the Attorney General

The Committee has considered a large number of questions about the application of subsection (a) of the Whitten Amendment which have been raised by some of the Departments and in various meetings of Council and Civil Service groups and has found no question which is not susceptible of agency determination. Many of the questions will be answered in different ways by different agencies according to the peculiarities of their administrative problems, but we foresee no adverse effects from diversity of agency practice in applying subsection (a) of the amendment.

If the Civil Service Commission concludes, as apparently it will, that it has no authority to regulate the administration of subsection (a), there will be no central audit or inspection of agency actions converting temporary promotions to permanent promotions. This observation is made, not to suggest agency freedom to apply the subsection loosely, but rather to show that there is no possibility that an agency's honest practical interpretation or application of the subsection would be upset by a technical or legalistic ruling issued as a result of a post audit decision.

The only way that any agency's application of the subsection could be upset would be through the issuance of an opinion by the Attorney General in answer to a question submitted to him by that or a different agency. It appears, therefore, that all possibility that an external ruling might upset agency actions could be eliminated if all agencies refrain from submitting questions on their own responsibility. Therefore, the Committee recommends that no questions be submitted to the Attorney General on behalf of the Council. It further recommends that the Council urge its member agencies not to submit such questions directly.

If further serious questions arise or if any agency desires assistance on any question the Committee should stand ready to help by ascertaining the practice in other agencies, and coming up with answers based upon the experience and advice of the other members of the Council. It is further suggested that, if questions which appear to require legal interpretations do arise in the future, such questions should be channeled through the Employment Committee.

I-B. Promotions outside the Competitive Service

At the regular meeting of the Council on May 8, the Committee was asked to consider the meaning of the language "a regular appointment system or procedure established prior to September 1, 1950." The Committee believes that there is no question but that the regulations of the Civil Service Commission in Part 21, issued under authority of the Veterans Preference Act of 1944, meet this criteron and that all agencies, even those established after September 1, 1950, may apply the second proviso of subsection (c) to any appointment made in accordance with those regulations.

II. Common Approach on Conversions to Permanent Promotion

The Committee feels that conversion from temporary promotion to permanent promotion should be made on the basis of common criteria. In undertaking this study, the Committee found that criteria are required only where the quota of positions occupied prior to September 1, 1950, is less than the number of employees eligible for conversion to permanent promotion. They are not required (1) where no permanent promotion can be made because there were no employees in the grade or in the organization prior to September 1, 1950, or (2) where the quota of positions occupied prior to September 1, 1950, equals or exceeds the number of employees eligible for conversion to permanent promotion. In the latter situation, however, criteria would be needed if the ageny did not wish to fill the quota.

In considering types of criteria to be applied, the Committee found that the primary factors in making selections are equity among employees and administrative practicability. It is assumed that the selections for temporary promotion were made on the basis of merit demonstrated in actual work performance. Therefore, the factor of merit is not predominant in making selections for conversion to permanent promotion. In reaching this conclusion, the Committee has not, however, foreclosed consideration of merit as a basis for selection for conversion to permanent appointment.

Adopting equity among employees and administrative practicability as the primary factors in conversion to permanent promotion, the Committee makes the following recommendations as guidelines to the various departments and agencies:

A. Where the administrative situation makes it feasible to identify these positions which may be expected to continue after the close of the emergency, establish a priority for incumbents of positions which are related to the regular functions of the organization, as distinct from incumbents of positions which are related to the emergency functions of the organization.

This recommendation is based on the fact that discussions of the pending revision of the Whitten Amendment on the floor of the House indicate clearly that the authority to make permanent promotions is intended to be used to take care of problems faced in permanent establishments, not to be used in cases of purely temporary functions.

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B. Make individual selections, whether within these categories or without regard to them, in order of incumbents' promotions to the grades. Exceptions to this order may be made for those who have previously served in the grade or in higher grades on a permanent basis.

This order of selection, in effect, treats the eligible employees as nearly as possible in the way that they would have been treated if permanent promotions had been authorized at the time they were temporially promoted. The order is applicable without change to the conversion or promotion of employees on a permanent basis to vacancies in the quota which open up in the future. Thus it provides maximum equity and administrative feasibility both to present conversions and future promotions. The exception permits agencies to insure that employees who have been demoted below their present grades during their current periods of employment will be among the first to be converted to the permanent basis.

C. Where an employee has received more than one promotion since September 1, 1950, and the quota limitation does not permit conversion to permanent promotion in the higher present grade, the agency should consider making the conversion in the grade to which he was first promoted. This would be a record transaction only; the employees would continue in the higher grade on a temporary basis, awaiting the occurrence of a vacancy in the quota of that grade.

In this connection, the Committee is cognizant of the relationship between the conversions from temporary to permanent promotion and prospective conversions from Civil Service Reserve to Civil Service Career appointments under the pending plan for such appointment categories. Because of this relationship, the Council should urge the Civil Service Commission to proceed with all possible dispatch to establish the Career and Reserve types of status appointments as previously recommended. It should also ask the Commission to work out promptly, with the Council's cooperation, a method for lifting tenure restrictions on Reserve appointments so as to maintain a regular corps of Career appointees in line with the peacetime size of the Federal service.

III-A. Delegation of Authority to Approve Cases Involving Inequity

The language of the bill does not preclude delegation of authority, either by the central office of the Civil Service Commission or by heads of departments and agencies. The Commission has clearly indicated, however, that it will not approve any case which is not properly signed by the head of the department or agency. The Federal Personnel Council is already on record as opposing a requirement that recommendations be signed by heads of departments and agencies because this would be a retrogression from procedural improvements already permitted by Public Law 600, 79th Congress. The Committee Recommends that the Federal Personnel Ceuncil also take a position in favor of delegation of authority to approve promotions under the hardship clause within the Civil Service Commission.

III-B. Criteria for Application to Cases Involving Inequity

The Committee has no criteria to suggest to the Commission for the purpose of passing on the merits of each case. It is believed that such criteria can be developed only on the basis of actual review of cases and that the Commission will be able to do this itself after a reasonable period of experience in this field. However, the Committee does recommend that a procedure be adopted for cases involving hardship or inequity which will provide for the following certification by the departments and agencies:

(1) That the position in question has been reviewed within the past three months for determination as to classification and that the classification is correct;

(2) that the employee is fully qualified to perform the duties of the position;

(c) that there is no other person of at least equal qualifications meeting the Whitten Amendment requirements who is available from usual recruitment sources within a reasonable length of time.

Attached:

Appendix (Council report dated Feb. 1, 1951 on H.R. 247, Mr. Miller's proposed revision of the Whitten Amendment.)

Appendix

Report on H. R. 247. Relating to appointments, promotions, and transfers in the Federal civil service during the existence of the present national emergency.

The Council thinks that in times of emergency especially it is of great importance that the President and the Civil Service Commission should have authority to make flexible regulations for the needs of the service. We therefore favor amendment of Section 1302 of the Supplemental Appropriation Act of 1951, known as the Whitten Amendment, and think that the provisions should be general rather than specific. The Civil Service Commission should have latitude by regulation to determine what original appointments, reinstatements, reappointments, reassignments, or transfers should be made on a permanent basis. As to the substitute provisions of the bill, we desire to point out that officers and employees of the Federal Government having a permanent civil service status do upon promotion or transfer to another position still retain such status even though they receive indefinite appointments. In order to make our thinking clear, we would like to restate some of the findings of the Council which were considered by the Commission in issuing the indefinite appointment regulations. The Council is unanimously on record on the importance of preventing increases in the number of permanent personnel. The whole concept that the Council fosters is that the career service should be developed and strengthened, and that emergency jobs which arise not only in times of general emergency but also in connection with many other circumstances should be filled through indefinite or temporary appointments outside the career service.

In this period of emergency the Council has taken the position that reinstatements, promotions, and transfers, as well as new appointments, should be on an indefinite basis. We have applied this concept consistently to promotions in the same agency and to transfers to another agency. The Council has further urged the Commission that transferees be given reemployment rights on a highly restrictive basis in the national interest, and that retrenchment at a later time in the defense activities should not be made difficult by the building up of retention rights on a permanent basis in the gaining agency. Instead, the Council has strongly favored that the Commission and other agencies cooperate to find places for employees with status who may at a future time be dropped by reduction in force and that the Commission use a displacement procedure to place them appropriately. The Council believes that increasing the strength of the career service and fostering the sense of obligation among all agencies to help fit career employee back into continuing activities will be a far better solution to the problem to which this bill is directed than a provision giving the employee permanent rights in a new agency. There are instances, of course, where a gaining agency has reason to expect that a position is permanent and that it will not need to be claimed by returning veterans or others. However, there is a matter of equity involved. The defense establishment, for instance, might be in a position to offer quite a few permanent appoint-

ments whereas a purely emergency agency, such as Economic Stabilization Agency, could not reasonably be expected to have any permanent positions whatsoever. We are aware of the criticism that the regulations have unduly restricted the movement of employees from non-defense to defense activities. However, we wish to point out that for critical positions there is the incentive of reemployment rights. Furthermore, employees transferring can often obtain a higher grade because of the importance and urgency of these expanding activities. The regulations do tend to restrain hedgehopping and idle movement of personnel. In conclusion, the Committee on Personnel Policies of the Emergency would like to see Section 1302 amended to give the Commission latitude by regulation to determine what personnel actions should be on a permanent or indefinite basis.

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United States Civil Service Commission
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TO: Council Members

SUBJECT: Advance Agenda for Council Meeting - May 29, 1952 - 1:30 P.M.

1. Employment Committee - Mr. McVeigh

For discussion and action:

Report on Promotion Regulations Under 1952 Whitten Amendment
(Copy distributed with this agenda)

2. Employee Relations Committee - Mr. Brody

a) Employee Participation in Agency Management

The report introduced in the May 8 meeting will come up for further discussion and action.

b) Revisions in Guide to Effective Relationships with Organized Employee Groups

The report distributed on April 24 will come up for discussion and action.